

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PATTY BEALL, MATTHEW MAXWELL,)
DAVID GRAVELY, TALINA MCELHANY,)
KELLY HAMPTON, CASEY BROWN,)
JASON BONNER, KEVIN TULLOS,)
ANTHONY DODD, ILENE MEYERS,)
TOM O'HAYER, JOY BIBLES, DON)
LOCCHI and MELISSA PASTOR,)
Individually and on behalf of)
all others similarly situated;)
Plaintiffs)
vs.) 2:08-cv-422-TJW
TYLER TECHNOLOGIES, INC., and)
EDP ENTERPRISES, INC.)
Defendants.)

VIDEOTAPED DEPOSITION OF EDP ENTERPRISES, INC.'S
CORPORATE REPRESENTATIVE, ROBERT SANSONE

PORTLAND, MAINE

AUGUST 17, 2010

ATKINSON-BAKER, INC.

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REPORTED BY: Cheryl C. Pieske, RMR

FILE NO.: A40636D

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4 - - -

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12 Individually and on behalf of)

13 all others similarly situated;)

14 Plaintiff,)

15 vs.) 2:08-cv-422 TJW

16 TYLER TECHNOLOGIES, INC., and,)

17 EDP ENTERPRISES, INC.,)

18 Defendants.)

19 -----

20
21 Videotaped deposition of ROBERT J. SANSONE, ,

22 taken on behalf of Plaintiff, at 477 Congress Street,

23 Portland, Maine, commencing at 8:40 a.m., Tuesday, August

24 17, 2010, before Cheryl C. Pieske, RMR, Court Reporter

25 and Notary Public.

A P P E A R A N C E S:

FOR PLAINTIFFS:

SLOAN, BAGLEY, HATCHER & PERRY LAW FIRM

BY: LAUREEN F. BAGLEY, ESQ.

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FOR DEFENDANT:

MORGAN, LEWIS & BOCKIUS, LLP

BY: PAULO B. McKEEBY, ESQ.

1717 Main Street, Suite 3200

Dallas, Texas, 75201-7347

TYLER TECHNOLOGIES, INC.

H. LYNN MOORE, ESQ.

General Counsel

Also Present: Neil Orenstein, Videographer

1 09:06:49 instances where an implementation specialist on one job
2 09:06:52 might be doing job functions that are slightly different
3 09:06:55 from an implementation consultant but then on another job
4 09:06:59 would be doing the same job functions as an
5 09:07:02 implementation consultant?

6 09:07:05 MR. McKEEBY: Object to the question. You can
7 09:07:07 answer. I object to the form of the question. I'm
8 09:07:10 sorry. You can answer.

9 09:07:10 A. Are you asking me is that possible?

10 09:07:12 Q. Yes.

11 09:07:12 A. Yes, it's possible.

12 09:07:13 Q. Okay. So it would depend on the job, not
13 09:07:16 necessarily the position but the job that would create
14 09:07:21 perhaps a difference -- the difference that you were
15 09:07:24 speaking of?

16 09:07:24 A. That's one of the factors. The person
17 09:07:27 themselves can -- is probably a bigger factor.

18 09:07:32 Q. And is that because of their level of
19 09:07:34 experience in the job?

20 09:07:36 A. Or knowledge from a previous job or that
21 09:07:40 they've learned on the job. So, yes, experience,
22 09:07:43 knowledge, and, again, the customer as well.

23 09:07:46 Q. Okay.

24 09:07:50 A. Product.

25 09:07:51 Q. My -- I'm sorry. Go ahead.

1 09:07:52 A. Product also.

2 09:07:53 Q. So depending on the product they're installing

3 09:07:55 or the customer that they're working for, their -- their

4 09:07:59 job may be a little different?

5 09:08:00 A. Yes.

6 09:08:01 Q. Okay.

7 09:08:03 MR. McKEEBY: But it's not the company's position

8 09:08:05 that the designation consultant and specialist mean

9 09:08:09 different functions.

10 09:08:11 BY MS. BAGLEY:

11 09:08:11 Q. Okay. What is the company's position with

12 09:08:13 regard to the job title of implementation consultant

13 09:08:18 versus implementation specialist? Does Tyler

14 09:08:23 Technologies consider those to be different job

15 09:08:24 positions?

16 09:08:29 A. The industry and Tyler tend to be moving

17 09:08:34 towards implementation consultant. So there are fewer

18 09:08:37 people called implementation specialists. There may not

19 09:08:41 be any left right now. But it's merely something that's

20 09:08:46 happening in the industry and we're following.

21 09:08:49 Q. Is that because they are -- they essentially do

22 09:08:55 the same job functions?

23 09:09:01 A. Yes. Their job is to implement the software

24 09:09:05 product at the site so --

25 09:09:07 Q. Okay.

1 09:09:08 A. -- yes.

2 09:09:08 Q. When Tyler Technologies evaluated the

3 09:09:14 classification for implementation consultant and

4 09:09:19 implementation specialist, was there a difference in the

5 09:09:25 evaluation because the jobs were different, or did Tyler

6 09:09:29 Technologies consider both of those positions essentially

7 09:09:32 to be the same position for purposes of classifying those

8 09:09:36 job positions under the Fair Labor Standards Act?

9 09:09:39 MR. McKEEBY: I object to the form of the question.

10 09:09:42 You can answer.

11 09:09:43 A. We -- we didn't do a separate position

12 09:09:46 evaluation when the title changed because there was a

13 09:09:49 title change.

14 09:09:51 BY MS. BAGLEY:

15 09:09:53 Q. Well, I'm not sure you answered my question.

16 09:09:55 A. Oh, okay.

17 09:09:55 Q. My question wasn't limited to when the title

18 09:10:00 change was made. My question was in general when Tyler

19 09:10:03 Technologies evaluated the implementation consultant

20 09:10:06 position and the implementation specialist position, did

21 09:10:10 they engage in a separate evaluation of those job

22 09:10:13 functions to determine whether they were exempt

23 09:10:16 positions, or did Tyler Technologies consider them to

24 09:10:20 basically be the same job position for purposes of making

25 09:10:22 that determination?

1 11:08:07 those four HR directors are to engage in the analysis of
2 11:08:13 determining whether a position is exempt or nonexempt
3 11:08:15 under the FLSA, correct?

4 11:08:18 MR. McKEEBY: Object to the form of the question.

5 11:08:18 THE DEPONENT: Yeah.

6 11:08:19 MR. McKEEBY: You can answer.

7 11:08:20 A. I don't think that's entirely accurate.

8 11:08:22 BY MS. BAGLEY:

9 11:08:22 Q. Okay. Please correct me.

10 11:08:23 A. We do not -- we require that positions be
11 11:08:27 evaluated to determine whether they're exempt or
12 11:08:29 nonexempt. What we don't do is tell them specifically
13 11:08:33 how they have to do that.

14 11:08:34 Q. Nor does Tyler Technologies provide any
15 11:08:37 guidance or policies in that regard, correct?

16 11:08:41 MR. McKEEBY: Object to the form of the question.
17 11:08:43 You can answer.

18 11:08:43 A. Well, there's no policy because it's a law. So
19 11:08:47 we follow the law.

20 11:08:48 Q. Okay. And how -- do you train the HR directors
21 11:08:51 on how to follow the law, specifically the FLSA?

22 11:08:56 A. No. When we hire an HR director, we expect
23 11:08:59 them to be familiar with that. You wouldn't put somebody
24 11:09:04 into that role who wouldn't be familiar with the FLSA.
25 11:09:07 So I don't train them on it.

1 11:09:08 Q. Now, it's my understanding that the only
2 11:09:12 exemption that is being asserted with regard to the
3 11:09:21 implementor position is administrative exemption; is that
4 11:09:25 correct?

5 11:09:25 MR. McKEEBY: Well, I don't know.

6 11:09:28 BY MS. BAGLEY:

7 11:09:28 Q. Strike that. Let me start over. What
8 11:09:32 exemption is Tyler Technologies relying on for purposes
9 11:09:38 of classifying implementors as exempt?

10 11:09:41 MR. McKEEBY: He's not equipped to answer that
11 11:09:43 question, and I'm not trying to be tricky. It's just the
12 11:09:47 administrative exemption, but I haven't prepared him to
13 11:09:51 testify on behalf of the company about the defenses in
14 11:09:53 the case.

15 11:09:55 MS. BAGLEY: I'm not -- and I'm not asking about the
16 11:09:57 defenses. I'm asking in his mind, in Tyler's corporate
17 11:10:04 decision making --

18 11:10:04 MR. McKEEBY: Okay.

19 11:10:06 MS. BAGLEY: -- process, what exemption were they
20 11:10:08 using?

21 11:10:09 MR. McKEEBY: Okay.

22 11:10:12 MS. BAGLEY: -- to -- you know, what part of the
23 11:10:18 exempt classifications was Tyler relying on for purposes
24 11:10:21 of saying that the implementor position was exempt?

25 11:10:24 A. The implementor position, you mean

1 11:10:27 implementation consultant or specialist?

2 11:10:28 Q. Right.

3 11:10:28 A. Okay.

4 11:10:29 Q. I'm saying that because we have got the

5 11:10:32 different terms. So implementor just seems to be --

6 11:10:32 A. Uh-hmm, okay.

7 11:10:34 Q. -- the wrong way to say it.

8 11:10:34 A. The administrator.

9 11:10:36 Q. Okay. Are there any other exemptions that

10 11:10:39 Tyler Technologies is relying on for purposes of

11 11:10:44 classifying implementors as exempt under the Fair Labor

12 11:10:48 Standards Act?

13 11:10:48 A. No.

14 11:10:49 Q. Have you or any of the other HR directors

15 11:11:02 reviewed Department of Labor decisions to determine

16 11:11:07 whether the implementor position was exempt or nonexempt?

17 11:11:14 A. Not specifically to implementation consultants

18 11:11:18 but when I get notices from professional organizations, I

19 11:11:23 read them about positions being classified as exempt or

20 11:11:28 nonexempt, but I've never seen one that directly ties to

21 11:11:32 implementation consultant.

22 11:11:32 Q. Are you aware that there are Department of

23 11:11:36 Labor decisions that discuss computer software training

24 11:11:41 and similar implementor positions?

25 11:11:45 MR. McKEEBY: You can answer.

1 11:11:46 A. I'm aware of the recent changes to the act.

2 11:11:52 MR. McKEEBY: That wasn't her question.

3 11:11:54 THE DEPONENT: I'm sorry.

4 11:11:55 MR. McKEEBY: Would you repeat your question?

5 11:11:57 A. I am not aware of any recent decisions

6 11:12:00 affecting implementation consultants, if that's your

7 11:12:02 question.

8 11:12:03 BY MS. BAGLEY:

9 11:12:03 Q. And it wasn't limited to recent decisions. Are

10 11:12:05 you aware of any decisions of the Department of Labor

11 11:12:07 that deal with computer positions?

12 11:12:14 A. Computer positions? That's --

13 11:12:16 Q. Positions that involve implementation of

14 11:12:19 computer software?

15 11:12:20 A. No, I'm not.

16 11:12:39 Q. During the time that you were involved with the

17 11:12:43 Courts and Justice evaluation, was there a determination

18 11:12:48 at that meeting that the telephone support position

19 11:12:53 should be changed from exempt to nonexempt?

20 11:12:58 MR. McKEEBY: Object. That's outside the scope of

21 11:13:01 the designation.

22 11:13:02 MS. BAGLEY: Okay.

23 11:13:03 MR. McKEEBY: I instruct him not to answer questions

24 11:13:05 that are outside the scope of the designation.

25 11:13:05 BY MS. BAGLEY:

1 17:15:10 MS. BAGLEY: Right.

2 17:15:11 MR. McKEEBY: -- status.

3 17:15:12 MS. BAGLEY: It may not be, Paulo.

4 17:15:14 MR. McKEEBY: I really don't think it is, and I'm

5 17:15:15 sure there are a lot of those complaints, and I asked him

6 17:15:19 as my --

7 17:15:19 MS. BAGLEY: Is that an admission on the record?

8 17:15:20 MR. McKEEBY: No. I said I'm sure as in I would

9 17:15:24 imagine, not being a representative of Tyler Technologies

10 17:15:28 in that context, but, you know, I take my responsibility

11 17:15:32 seriously to prepare him to be the corporate

12 17:15:34 representative.

13 17:15:34 Q. So let me ask him --

14 17:15:34 A. So one of the things --

15 17:15:36 MS. BAGLEY: I will ask it --

16 17:15:36 MR. McKEEBY: All right.

17 17:15:37 BY MS. BAGLEY:

18 17:15:37 Q. In your personal capacity as the HR director

19 17:15:40 for Tyler Technologies, have you become aware of

20 17:15:44 complaints by implementors regarding the number of hours

21 17:15:48 they're required to work?

22 17:15:48 A. No.

23 17:15:49 Q. And in your personal capacity as the HR

24 17:15:54 director and the vice-president of HR for Tyler

25 17:15:58 Technologies, **EXHIBIT 1** you made aware of any complaints

1 17:16:02 by implementors regarding the amount of travel that they
2 17:16:05 are required to do?

3 17:16:06 A. The amount of travel has been brought to my
4 17:16:10 attention, not necessarily in the form of a complaint.

5 17:16:13 Q. Okay. How was it brought to your attention?

6 17:16:16 A. Well, they mention that the travel after a
7 17:16:19 while gets old, but they understand that that's part of
8 17:16:23 the job.

9 17:16:24 Q. Are there any people that, other than yourself
10 17:16:34 and the HR directors that we've talked about, that make
11 17:16:39 decisions regarding exemptions of employees?

12 17:16:44 A. No.

13 17:16:48 Q. Are there -- within MUNIS -- strike that. Does
14 17:17:42 it make any difference to Tyler Technologies whether an
15 17:17:45 implementor works out of their home or works out of an
16 17:17:48 office?

17 17:17:48 MR. McKEEBY: I object to the form of the question.
18 17:17:54 You can answer.

19 17:17:55 A. It's preferable that they work out of the
20 17:18:01 office, but they can be effective out of their home.

21 17:18:05 BY MS. BAGLEY:

22 17:18:05 Q. Does that have anything -- does the fact that
23 17:18:15 an employee works out of -- an implementor works out
24 17:18:18 their home versus an office, does that affect the
25 17:18:22 employee's employment in any way?

1 17:18:27 A. No.

2 17:18:27 Q. Does that affect how the employee is

3 17:18:34 supervised?

4 17:18:35 A. No.

5 17:18:36 Q. Does that affect how the implementor does their

6 17:18:48 job?

7 17:18:49 A. No.

8 17:18:54 Q. Would you please define the fluctuating work

9 17:19:15 week provision under the Fair Labor Standards Act?

10 17:19:19 MR. McKEEBY: That's a legal concept that this

11 17:19:22 witness hasn't been designated to testify about and which

12 17:19:27 is not appropriate in the context of the deposition

13 17:19:29 anyway.

14 17:19:29 Q. Does Tyler Technologies, have they -- have they

15 17:19:34 ever -- strike that. During the time that you have

16 17:19:37 worked for Tyler Technologies, have you ever been aware

17 17:19:41 of a policy, practice, or guideline within Tyler

18 17:19:50 Technologies that an implementor would be paid based on

19 17:19:55 the fluctuating work week?

20 17:19:57 MR. McKEEBY: Again, object to the form of the

21 17:19:59 question. I'm not sure that this witness knows what the

22 17:20:02 fluctuating work week is. I'm not sure -- I know that we

23 17:20:05 haven't prepared him to testify about anything to do with

24 17:20:08 that legal concept, and it's not appropriate in the

25 17:20:10 context of this **EXHIBIT 1** So he's not testifying about

1 17:20:14 that.

2 17:20:17 BY MS. BAGLEY:

3 17:20:18 Q. Are you going to listen to your counsel and not

4 17:20:20 answer the question?

5 17:20:20 A. Yes.

6 17:20:21 MS. BAGLEY: Certify the question, please.

7 17:20:26 Q. Mr. Sansone, have you ever been -- have you

8 17:20:29 ever told an implementor or someone that's hiring an

9 17:20:34 implementor that it's Tyler Technologies' understanding

10 17:20:44 that they're going to pay that implementor half time for

11 17:20:49 any hours they work over 40 hours a week?

12 17:20:52 MR. McKEEBY: You can answer that question.

13 17:20:55 A. I have not.

14 17:20:56 BY MS. BAGLEY:

15 17:20:56 Q. Are you familiar with that concept?

16 17:20:58 A. No, I'm not.

17 17:20:59 Q. Have you ever heard of fluctuating work week?

18 17:21:02 A. Not in the context that you're talking about

19 17:21:09 anyway.

20 17:21:09 Q. Okay. How have you heard of it?

21 17:21:12 MR. McKEEBY: Yeah, and if you have heard of it from

22 17:21:15 counsel in connection with this lawsuit, you can --

23 17:21:19 MS. BAGLEY: I don't want you to tell me anything

24 17:21:21 that you have heard or discussed with your -- with

25 17:21:24 counsel for Tyler Technologies in this lawsuit.

EXHIBIT 1

CERTIFICATE

I, Cheryl C. Pieske, RMR, Notary Public in and for the State of Maine, hereby certify that on AUGUST 17, 2010, personally appeared before me the within-named deponent who was sworn to testify the truth, the whole truth and nothing but the truth in the aforementioned cause of action; and the foregoing, as reduced to computer type, is a true and accurate record of the evidence as taken by me by means of stenotype.

I further certify that I am a disinterested person in the event or outcome of the aforementioned cause.

IN WITNESS WHEREOF, I subscribe my hand at Waldo, Maine, this 30th day of August, 2010.

Cheryl C. Pieske, RMR

Notary Public

My Commission Expires June 25, 2016.

2:08-cv-422 TJW

PATTY BEALL, et als] IN THE DISTRICT COURT OF

Plaintiffs]

vs.] MARSHALL DIVISION

TYLER TECHNOLOGIES, INC.,]

and EDP ENTERPRISES, INC.,]

Defendants] EASTERN DISTRICT OF TEXAS

REPORTER'S CERTIFICATION

DEPOSITION OF ROBERT SANSONE

AUGUST 17, 2010

I, Cheryl C. Pieske, Registered Merit Reporter

in and for the State of Maine, hereby certify to the

following:

That the witness, ROBERT SANSONE, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by the
witness;

That the deposition transcript was submitted on
August 30, 2010, to the witness or to the attorney for
the witness for examination, signature and return to me
by September 20, 2010;

That the amount of time used by each party at the
deposition is as follows:

Ms. Bagley - 8:40 a.m. to 5:40 a.m., 5:45 p.m. to
5:53 p.m.

1 Mr. McKeeby - 5:40 p.m. to 5:45 p.m.

2 That pursuant to information given to the deposition
3 officer at the time said testimony was taken, the
4 following includes counsel for all parties of record:

5 Ms. Laurene Bagley, Attorney for Plaintiffs

6 Ms. Chandra L. Holmes Ray, Attorney for Plaintiffs

7 Mr. Paulo B. McKeeby, Attorney for Defendants

8 Mr. H. Lynn Moore, Attorney for Defendants

9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties or
11 attorneys in the action in which this proceeding was
12 taken, and further that I am not financially or otherwise
13 interested in the outcome of the action.

14 Further certification requirements pursuant to Rule
15 203 of TRCP will be certified to after they have
16 occurred.

17 Certified to by me this 30th day of August, 2010.

18
19 _____
20 Cheryl C. Pieske, RMR
21
22
23
24
25

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to _____, Custodial Attorney;

That \$ _____ is the deposition officer's charges to the ^ party for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this _____ day of

_____, _____.

Cheryl C. Pieske, RMR